

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SPECIAL CRIMINAL APPLICATION (AGAINST ORDER OF
EXTERNMENT) NO. 2525 of 2013**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE S.G.SHAH

=====

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

=====

HIRABEN NATUBHAI FULMALI....Applicant(s)

Versus

STATE OF GUJARAT & 2....Respondent(s)

=====

Appearance:

MR ATIT D THAKORE, ADVOCATE for the Applicant(s) No. 1

MS MOXA THAKKAR, APP for the Respondent(s) No. 1-3

=====

CORAM: HONOURABLE MR.JUSTICE S.G.SHAH

Date : 25/10/2013

CAV JUDGEMNT

By way of the present petition, under Articles 226 and 227 of the Constitution of India, the petitioner has challenged an order dated 5/2/2013 passed by Deputy Police

Commissioner, Vadodara City, in Externment Case, by which, the petitioner has been externed for a period of one year from different districts namely Vadodara City, Vadodara [Rural], Anand, Panchmahals [Godhra], Narmada and Bharuch, as well as he has challenged the order passed by the Joint Secretary, Home Department, Gandhinagar dated 3/8/2013 by which, appeal preferred by the petitioner being Externment Appeal No. 113 of 2013 is dismissed.

2 Brief facts emerges from the record are as under :

2.1 The petitioner was served with a notice issued by Deputy Police Commissioner, Surat city under Section 59 of the Gujarat Police Act, 1951, calling upon the petitioner to show cause as to why an order shall not be passed under Section 56(a) of the Bombay Police Act, since several offences were registered against him. The case was registered as Externment Case No. 119 of 2012 by the Deputy Police Commissioner, Surat city. The petitioner submitted his reply dated ../10/2012.

2.2 The Deputy Police Commissioner, Surat city, after considering the facts, came to the conclusion that petitioner is required to be

externed for a period of one year from certain districts which are referred hereinabove and passed an order dated 15/12/2012 and externed the petitioner for a period of one year.

2.2.1. The petitioner challenged the said decision before the State of Gujarat by preferring Externment Appeal No. 113 of 2013. The appeal was heard by Joint Secretary, Home Department, Gandhinagar and the same was dismissed by order dated 03/08/2013. Hence, the present petition.

3 Mr. Atit D. Thakore, learned Advocate for the petitioner submitted that the notice as well as orders issued and passed by the Authorities are of totally non-application of mind. The Deputy Police Commissioner, Surat city had issued notice to the petitioner under Section 56(a) of the Act, however has considered other aspects which do not fall within purview of Section 56(a) of the Act. He has submitted as per section 56(a), if it is found that movements or acts of any person causing or calculated to cause alarm, danger or harm to a person or property, an order can be passed under Section 56(a) of the Act. While issuing notice as well as deciding the matters, the Authorities have taken into consideration five offences which are registered

which falls either Chapters 16, 17 or 21 of the Indian Penal Code. If the authority has considered the externment proceedings for the said offences, the notice ought to have been issued under the provisions of Section 56(b) of Bombay Police Act. He submitted that if the orders of Deputy Police Commissioner, Surat city and Appellate Authority are perused, the same is totally non-application of mind.

4 He further submitted that offence registered at C R No. I-150/2012 with Mahidharpura Police Station is concerned, it is a solitary offence and the petitioner has been falsely involved therein. Hence, it is a clear non application of mind. In support of his submission, he has relied upon a decision of this Court in the case of Shri Hussainmiya @ Jago Razakmiya Qadri v. State of Gujarat & Ors. reported in 1999 (2) G.L.H. 786. He submitted that in the said decision this Court has held that if the Authority has taken any action under the Bombay Police Act other than the provision mentioned in the Show-cause notice, like one in the present case, this Court has quashed and set aside the externment order passed by the Authority.

5 Heard Ld. APP for the respondents.

6 Notice dated 24/11/2012 issued by Deputy Police Commissioner, Vadodara city, under Section 59 of the Act and makes it clear that the petitioner was called upon to show cause as to why he should not be externed under 56(a) of the Act. Notice also discloses that three offences were registered against the petitioner in the years 2009, 2010 and 2012 and the same is registered either under Chapters 16, 17 and 21 of the Indian Penal Code.

7 It appears from the said order dated 5/2/2013 passed by Deputy Police Commissioner, Vadodara City, by which, the petitioner is externed, that the Authority has considered the offence registered against the petitioner which is mentioned in the notice. On perusing the order passed by Appellate Authority, it also appears that the Appellate Authority has also considered the said offences under section 56(b), which empowers the authority to issue notice for the offences mentioned therein. However the petitioner was called upon to reply for the alleged action under Section 56(a) of the Act. It has been held by this Court in the case of Shri Hussainmiya @ Jago Razakmiya Qadri (supra), if the notice is issued under Section 56(a) of Bombay Police Act and where the externment order

shows that the powers under Section 56(b) of the Act, has been exercised, the same is non-application of mind and therefore, it can be said that subjective satisfaction recorded by the authority, before passing the order of externment, is vitiated.

8 The competent authority has at some places referred the provisions of the Gujarat Police Act and at some places Bombay Police Act. It also confirms that there is non-application of mind while passing such punitive order. In support of my decision to quash and set aside the impugned order of externment, I rely upon the following decisions :

I Gopalji Laxmanji Rathod v. State of Gujarat reported in 2001 [3] GLR 2663

II Jagdish Shamjibhai Makwana v. Sub Divisional Magistrate, Bhavnagar reported in 2002 [2] GLR 1158.

9 In view of the above facts and in view of the above judgment, I am of the opinion that the petition requires consideration and accordingly is allowed. The orders dated 5/2/2013 and 3/8/2013 passed by the Authority as well as Appellate Authority respectively are hereby quashed and set aside. Rule is made absolute.

Direct Service is permitted.

(S.G.SHAH, J.)

* Pansala.